

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	No. 12-260
	:	
ERIC MARQUES DEVLIN-BELL, JR.	:	

MEMORANDUM

Juan R. Sánchez, J.

January 17, 2013

Defendant Eric Marques Devlin-Bell, Jr. (Bell) is charged with one count of detaining a person while impersonating a federal officer, in violation of 18 U.S.C. § 913, one count of producing a fraudulent identification document, in violation of 18 U.S.C. § 1028(a)(1), and one count of possessing a fraudulent identification document, in violation of 18 U.S.C. § 1028(a)(6). Bell asks this Court to suppress all statements and physical evidence obtained during an April 12, 2012, traffic stop. Bell argues the scope of the investigatory stop was unlawfully expanded and his statements were elicited while he was in custody and without being provided *Miranda* warnings, in violation of the Fourth and Fifth Amendments to the Constitution, respectively. He also argues his consent to a search of his car during the stop was, in fact, not voluntary, rendering the search unlawful under the Fourth Amendment. Bell further argues these constitutional violations tainted subsequent statements he made to police and warrant-based searches and seizures. He asks this Court to suppress those subsequent statements and seized items as well. Finally, Bell seeks suppression of evidence taken from a laptop computer seized during the traffic stop for the additional reason that the Government's detention of the computer for over three months before searching it was an unreasonable interference with his possessory rights in the computer in violation of the Fourth Amendment.

Because the initial, lawful traffic stop promptly ended, at which point the encounter between Bell and law enforcement officers became consensual, and because Bell voluntarily consented to the search of his car, Bell's request to suppress the statements and the physical evidence obtained during the April 12 roadside encounter will be denied. As there were no constitutional violations during the encounter, the request to suppress all subsequent statements and seized items will also be denied. Finally, because the delays in obtaining and executing a warrant to search Bell's computer were reasonable, the contents of the computer will not be suppressed. In reaching this conclusion, this Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. On April 6, 2012, Caln Township Police Department Sergeant (Sgt.) Chris Sambuco stopped a dark blue Ford Crown Victoria driven by Bell for failure to use a turn signal. Sgt. Sambuco noticed Bell's car had tinted windows, three antenna mounts, and two LED suction cup police-style warning lights adhered to the back window. A female was sitting in the front passenger seat. Upon approaching Bell's driver side door, Sgt. Sambuco noticed Bell was wearing a nylon police belt with pouches and openly carrying a handgun. Sgt. Sambuco also heard a cellular phone in the car scanning the Chester County Police radio. Sgt. Sambuco directed Bell to place both hands on the steering wheel and asked him for his driver's license, vehicle registration, and proof of insurance. Bell produced the registration, proof of insurance, and a Pennsylvania identification card. Sgt. Sambuco walked back to his patrol car to verify the information Bell provided, and learned Bell's Pennsylvania driver's license was suspended, but his insurance and registration were in proper order.

2. Sgt. Sambuco returned to the driver's side of Bell's car and invited Bell to speak with him out of the hearing of his female passenger so as not to "air any of his dirty laundry" in front of her. Hr'g on Mot. to Suppress Tr. 73, Nov. 13, 2012. Bell agreed, and he and Sgt. Sambuco walked to the rear of Bell's car to talk. At the rear of the car, Bell became combative and began verbally asserting his rights. Bell argued his car's window tint did not violate the Pennsylvania Motor Vehicle Code, questioned whether Sgt. Sambuco had probable cause to stop him, and used other "police jargon" in defending his actions. *Id.* at 74. Sgt. Sambuco asked Bell to activate the warning lights, but Bell refused. Sgt. Sambuco informed Bell he was going to issue him several citations, which Bell would receive in the mail. Sgt. Sambuco then told Bell if Bell refused to activate the warning lights, he would not pursue the issue of the lights further, and Bell was free to leave. Lastly, Sgt. Sambuco reminded Bell that he could not drive his car due to his suspended license, and Sgt. Sambuco then left with Bell remaining in the parking lot.

3. On April 10, 2012, Tredyffrin Township Police Department Detective (Det.) Todd Bereda began an investigation of a roadside encounter that occurred in the area of Route 202 near Old Eagle Road on April 9, 2012, involving Michael Boykins, whose car had become disabled at that location, and a man wearing security gear, police related regalia, and a badge, and driving a dark blue Ford Crown Victoria outfitted with lights and whip antennas, who Boykins later identified as Bell.

4. Det. Bereda learned Bell was the driver of the dark blue Crown Victoria involved in the April 9 incident and learned the details of Sgt. Sambuco's April 6 stop of Bell. Det. Bereda also obtained a photo of Bell and learned Bell's driver's license was suspended until 2015.

5. On April 12, 2012, Det. Bereda met with Sgt. Sambuco and Chester County Det. Matthew Gordon to set up a consensual encounter with Bell during which they could discuss the

April 9 roadside encounter between Bell and Boykins. Det. Bereda partially filled out a Tredyffrin Township Police Department Waiver of Rights and Consent to Search form to use during the pre-planned encounter with Bell. Det. Bereda partially completed the form to specify the places to be searched and items to be seized based on the results of his preliminary investigation. In particular, he identified the vehicle to be searched as Bell's dark blue Ford Crown Victoria and identified the items to be seized as any police lights and any police and/or law enforcement style identifications. It also authorized the seizure of any contraband, the fruits of a crime or things otherwise criminally possessed, property which is or has been used as the means of committing a criminal offense, and property which constitutes evidence of the commission of a crime. The form identified the location of Bell's vehicle as 1810 Olive Street, Coatesville, Pennsylvania, Bell's last known address.

6. After the planning meeting, Det. Bereda and Sgt. Sambuco traveled together in a marked Caln Township Police patrol car to Bell's last known address. Det. Gordon drove a second patrol car to a nearby location where they believed Bell might be. As Det. Bereda and Sgt. Sambuco travelled to Bell's residence, they saw Bell driving the dark blue Crown Victoria near the intersection of Lancaster Avenue and North Caln Road. Sgt. Sambuco immediately turned the emergency lights on, signaling Bell to stop. Bell promptly pulled into the parking lot of a Verizon business, which was empty except for one or two parked cars, and parked his car. The stop began at approximately 6:00 p.m.; it was still daylight, and the weather was cool and dry.

7. Sgt. Sambuco pulled into the lot and parked about 10 to 20 feet behind Bell's car, angling the hood of his patrol car toward Bell's driver's side rear bumper. Sgt. Sambuco exited his vehicle, approached the driver's side of Bell's car and asked Bell for his driver's license, vehicle registration, and insurance card. Sgt. Sambuco saw Bell's firearm inside a holster on the car's

front passenger seat. Bell handed Sgt. Sambuco his registration, insurance card, and Pennsylvania identification card. While Sgt. Sambuco talked to Bell, Det. Bereda exited the patrol car and stood in the overwatch position, behind Bell's car, observing the interaction.

8. After receiving Bell's identification and documents, Sgt. Sambuco removed the ammunition from Bell's firearm and placed the firearm and ammunition in separate locations in the car for safety. At Sgt. Sambuco's request, Bell exited the vehicle and walked with Sgt. Sambuco to the rear of Bell's car. Sgt. Sambuco then handed Bell's documents and identification to Det. Bereda. Det. Bereda began talking to Bell while Sgt. Sambuco stepped several feet away and observed the encounter.

9. At about the time Det. Bereda began speaking with Bell, two marked police cars arrived at the scene with their emergency lights activated to support Sgt. Sambuco and Det. Bereda. Det. Bereda instructed Sgt. Sambuco to dismiss the two support units because they were not needed, and the support units promptly left. Sgt. Sambuco also turned off the lights on his patrol car because the scene had been secured.

10. Thereafter, Det. Bereda told Bell that although the officers could issue him a citation for driving with a suspended license, they had decided not to cite him for the violation. Det. Bereda then returned all of Bell's driving documents and told him he was free to leave. All of this occurred within approximately five minutes of initiating the traffic stop.

11. After informing Bell he was free to leave, Det. Bereda turned and started walking back to the patrol car. Before reaching the car, Det. Bereda stopped, turned back towards Bell, and asked him if he was willing to talk about the April 9 roadside incident with Boykins. Bell agreed to talk about the incident. Bell was not given *Miranda* warnings.

12. Det. Bereda proceeded to engage Bell in an informal, friendly, but lengthy conversation concerning the April 9 roadside incident involving Boykins. The conversation occurred about 10 feet behind Bell's car. Sgt. Sambuco continued to observe from about 10 to 15 feet away. During the conversation, Bell made several incriminating statements.

13. A short period of time after Det. Bereda started to talk with Bell about the April 9 incident, Det. Gordon arrived at the scene, but stayed near his car about twenty feet from Bell, next to Sgt. Sambuco. Although the conversation was mostly between Bell and Det. Bereda, from time to time Det. Gordon and/or Sgt. Sambuco walked up to the conversation, listened in, and asked a question.

14. About one hour into this conversation, Det. Bereda asked Bell for his consent to search his car. Bell immediately gave verbal consent to the search. Det. Bereda then handed Bell the partially completed form consenting to the search. Det. Bereda informed Bell he did not have to consent to the search, and the consent form stated the subject could refuse to consent to the search. Because the location of the search was not 1819 Olive Street, Det. Bereda changed the address on the consent form to North Caln Road. While reading the consent form, Bell expressed concern about the paragraph authorizing the officers to seize his warning lights because he had purchased them at a substantial expense. Det. Bereda told Bell he would not seize the lights, but only wanted to confirm whether they were operable. Without asking any other questions or raising additional concerns, Bell read the entire consent form and signed it in the presence of both Det. Gordon and Sgt. Sambuco.

15. After Bell signed the consent form, Det. Bereda asked him if he would memorialize the prior conversation regarding the April 9 incident in writing, to which Bell agreed. Bell was given a statement form to complete while the officers searched his car. At some point while

writing his statement, Bell asked and was permitted to finish writing his statement while sitting in the back seat of Sgt. Sambuco's patrol car with the door open. As Bell completed his written statement, the officers proceeded to document the search of Bell's car with digital photographs and secure the items for which Bell had consented to seizure.

16. The officers searched Bell's car and documented their findings for about 45 minutes. They seized the following items:

- i. One silver security officer's badge attached to a chain;
- ii. Checks titled "Delaware Tittle Loans, Inc." dated April 13, 2012;
- iii. One "U.S. Enforcement Officer" identification card depicting Bell's photograph;
and
- iv. One laptop computer.

17. Bell had been cooperative and congenial throughout the encounter. When the officers found the computer, however, Bell, for the first time, appeared upset and became uncooperative. The officers had become suspicious about the checks found in the car because of the misspelling of "title" and because the telephone number on the check was disconnected. Det. Bereda told Bell he thought the checks were counterfeit. Bell informed the officers a copy of one of the checks was on the computer, and Bell offered to show Det. Gordon what was on the computer. Bell turned on the computer and the officers saw the emblem of the Federal Bureau of Investigations on the screen. Because Det. Gordon was concerned Bell might delete the contents of the computer, and because Bell had become upset when the officers found the computer, Det. Gordon did not ask for consent to search the computer, but rather stopped talking to Bell, effectively ending the consent search. Det. Gordon then seized the computer and left the scene.

18. After Det. Gordon left, Det. Bereda continued talking with Bell for 10 additional minutes, until approximately 8:10 p.m., when Det. Bereda gave Bell his business card and he and Sgt. Sambuco left the scene.

19. After the moment Det. Bereda handed Bell his Pennsylvania identification card and vehicle documents and told Bell he was free to go, none of the officers on scene used or threatened to use any force or made any show of authority. No officer ever withdrew his weapon, raised his voice, handcuffed Bell, or communicated to Bell directly or indirectly he was under arrest. The officers never physically prevented Bell from walking away from the scene or situated themselves or their cars so that Bell could not easily leave the parking lot. During the search of Bell's car, Bell moved freely between the patrol car and his car without interfering with the vehicle search and, at one point, was permitted to re-enter his vehicle.

20. A short time after the encounter ended, Bell called Det. Bereda on his cellular phone and engaged him in a conversation about the checks the officers had recovered from his car. During the call, Bell made additional incriminating statements.

21. On April 13, 2012, a warrant was issued to search Bell's residence at 1819 Olive Street, which was executed that same day, resulting in several seized items. Also on April 13, 2012, federal law enforcement investigators commenced a federal criminal investigation of Bell. On April 30, 2012, a United States magistrate judge issued to the federal investigators a warrant to search another address associated with Bell—79 South 8th Street, Coatsville, PA—and an arrest warrant for Bell. The affidavits in support of those warrants were based on facts acquired during the April 12 encounter. On May 1, 2012, the federal search and arrest warrants were executed.

22. On May 1, 2012, Bell was arrested and transported to the Caln Township Police Department. He waived his *Miranda* rights and gave another statement regarding the April 9 incident involving Boykins and regarding the checks found during the April 12 encounter.

23. The laptop computer seized during the April 12 encounter remained in the possession of the Chester County Detective's Office. On April 13, 2012, Det. Gordon obtained a warrant from a Chester County magisterial district judge to search the computer for evidence of forgery. On June 5, 2012, a United States magistrate judge issued a warrant authorizing the search of the computer for evidence of the federal crimes of impersonating a federal officer, producing and/or possessing a fraudulent identification document, mail fraud, and wire fraud. The computer was searched on July 27, 2012.

24. Bell has never asked any of the involved law enforcement agencies, directly or indirectly, to return any of the property seized from his residences or car, including laptop computer seized from his car on April 12, 2012.

25. On November 5, 2012, Bell filed the instant motion to suppress all the physical evidence and statements obtained on April 12, 2012, his post-arrest statement to the officers at the Caln Township Police Department on May 1, 2012, all other physical evidence seized pursuant to warrants issued after the April 12 encounter, and all evidence taken from the laptop computer found in Bell's car on April 12.

26. On November 13, 2012, this Court held a hearing at which Det. Bereda and Sgt. Sambuco credibly testified about the events of April 6 and 12, 2012.

DISCUSSION

A vehicle stop is a seizure under the Fourth Amendment. *United States v. Lewis*, 672 F.3d 232, 237 (3d Cir. 2012). The Fourth Amendment protects "[t]he right of the people to be

secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” U.S. Const. amend. IV. “Generally, for a seizure to be reasonable under the Fourth Amendment, it must be effectuated with a warrant based on probable cause.” *United States v. Torres*, 534 F.3d 207, 210 (3d Cir. 2008) (citation omitted). Under the exception to the warrant requirement established in *Terry v. Ohio*, 392 U.S. 1 (1968), however, a police officer “may conduct an investigatory stop of a moving vehicle if he has reasonable suspicion that its passengers are engaged in criminal activity.” *United States v. Mathurin*, 561 F.3d 170, 174 (3d Cir. 2009). During a valid traffic stop, an officer may expand the scope of the inquiry beyond the reason for the stop and detain the vehicle and its occupants for further investigation if the officer develops a reasonable, articulable suspicion of further criminal activity. *Id.* (quoting *United States v. Givan*, 320 F.3d 452, 458 (3d Cir. 2003)).

Bell concedes the initial traffic stop on April 12, 2012, was lawful because Det. Bereda and Sgt. Sambuco knew he was driving with a suspended driver’s license. Rather, he argues Det. Bereda’s inquiry into the April 9 incident with Boykins unlawfully expanded the scope of the investigation beyond the suspected crime of driving with a suspended license because the officers did not have reasonable suspicion that further criminal activity was afoot. An officer can investigate matters beyond the original scope of the stop *without* reasonable suspicion, however, if the seizure has ended and the encounter has become consensual. *United States v. Wilson*, 413 F.3d 382, 386-87 (3d Cir. 2005). If Bell’s April 12 seizure, therefore, became a consensual encounter prior to the officers questioning him about the April 9 incident with Boykins, then there was no Fourth Amendment violation. Bell and the Government dispute whether the April 12 stop became a consensual encounter or remained a seizure.

“A person is seized only when, by means of physical force or a show of authority, his freedom of movement is restrained”; in other words, “no seizure has occurred if a reasonable person would feel free to disregard the police and go about his business, or . . . decline the officers’ requests or otherwise terminate the encounter.” *Wilson*, 413 F.3d at 386 (citations omitted). In the context of a traffic stop, a seizure can terminate, therefore, when “the officer returns the license and registration and asks questions without further constraining the driver by an overbearing show of authority.” *Id.* at 386-87 (quoting *United States v. West*, 219 F.3d 1171, 1176 (10th Cir. 2000)).

Here, the seizure of Bell terminated when, within five minutes of the initiation of the stop, Det. Bereda returned Bell’s insurance card, registration, and identification; told Bell he was not citing him for driving with a suspended license; informed Bell he was free to leave; and began walking back to his patrol car. The subsequent conversation about the April 9 incident between Bell and Det. Bereda was entirely consensual. The conversation was congenial, and Bell never protested to any line of questioning. Except for a few instances when Sgt. Sambuco and Det. Gordon briefly participated in the conversation, they mostly stayed 15 to 20 feet away while Bell and Det. Bereda talked. The officers never made any show of authority. They never made intimidating movements, threats, or commands, used an intimidating tone of voice, or used any kind of force. They never positioned themselves in a way that prevented Bell from leaving at his will. *See id.* at 387 (holding police questioning during a traffic stop after police told driver he was free to leave did not reinstitute a seizure because there was no overwhelming show of authority or force). Contrary to Bell’s contention, the fact that two supporting patrol cars entered and left the parking lot before Bell was told he could leave would not have caused a reasonable

person in Bell's position to disregard Det. Bereda's subsequent statement and conduct indicating the traffic stop had ended and feel he could not terminate the encounter.

Bell argues the fact that he was stopped and questioned about his warning lights six days prior by Sgt. Sambuco would have caused a reasonable person in his position to view the April 12 questioning by three officers about the lights and related matters as a sign he was in trouble and obligated to stay and answer the questions. He also argues Det. Bereda used psychological coercion by taking advantage of his youth and by exploiting Bell's genuine interest in law enforcement. First, although the number of officers present is one factor to be considered in determining whether police coercion elevated an encounter to a seizure, *Banks v. Gallagher*, 686 F. Supp. 2d 499, 508 (M.D. Pa. 2009), the presence of three officers, alone, does not create a situation where a person feels he cannot terminate the encounter, *see United States v. Drayton*, 356 U.S. 194, 205-06 (2002) (holding questioning by three uniformed officers on a bus after having made one arrest was not a seizure). Moreover, Sgt. Sambuco and Det. Gordon had minimal, if any, intimidating or overwhelming impact on Bell, as those officers mostly remained in the background. Second, Bell's conduct during the April 6 stop belies his arguments he interpreted the situation as one in which he was not permitted to leave and was overwhelmed by psychological coercion. Specifically, during the April 6 stop, when Sgt. Sambuco began asking Bell about his warning lights, Bell responded by vehemently asserting his rights and refusing to answer questions and turn on his warning lights. A reasonable person who had declined to respond to police directives and questions without negative repercussions one day would not have felt unable to do so in such similar circumstances several days later. The record indicates Bell knew he was participating in a consensual conversation from which he could exit at any time, and any exploitation of his interest in law enforcement to maintain the consensual

encounter was completely permissible. *See Miller v. Fenton*, 796 F.2d 598, 605 (3d Cir. 1986) (noting “it is generally recognized that the police may use some psychological tactics in eliciting a statement from a suspect”). Considering the totality of the circumstances, this Court finds a reasonable person in Bell’s position would have felt free to terminate the April 12 encounter after being told he could leave. Accordingly, the seizure ended at that moment, and the conversation that occurred thereafter was entirely consensual and not a violation of the Fourth Amendment.

Bell argues his statements during the April 12 encounter must also be suppressed because they were the product of custodial interrogation without having been provided the warnings required by *Miranda v. Arizona*, 384 U.S. 436 (1966). Police must give *Miranda* warnings only when the person is in custody. *United States v. Willaman*, 437 F.3d 354, 359 (3d Cir. 2006). For the same reasons there was no seizure after Bell was told he could leave, and for additional reasons, Bell was not in custody during the April 12 encounter.

“A person is in custody when he either is arrested formally or his freedom of movement is restricted to ‘the degree associated with a formal arrest.’” *Id.* (quoting *United States v. Leese*, 176 F.3d 740, 743 (3d Cir. 1999)). When a person is not arrested, he is in custody only if law enforcement officers do or say something ““which indicates they would not have heeded a request to depart or to allow the suspect to do so.”” *Id.* (quoting *Steigler v. Anderson*, 496 F.2d 793, 799 (3d Cir. 1974)). Whether a person was in custody depends on the totality of the objective circumstances, not the subjective views of the person or the questioning officers. *Stansbury v. California*, 511 U.S. 318, 323 (1994). Courts consider the following factors when determining if a person was in custody: (1) whether the officers told the suspect he was under arrest or free to leave; (2) the location or physical surroundings of the interrogation; (3) the

length of the interrogation; (4) whether the officers used coercive tactics such as hostile tones of voice, displays of weapons, or physical restraints on the suspect; and (5) whether the suspect voluntarily submitted to questioning. *Id.* at 359-60.

Here, Det. Bereda expressly told Bell he was free to leave. The questioning occurred during the daytime in a public parking lot, not a police station. *See Berkemer v. McCarty*, 468 U.S. 420, 438-39 (1984) (noting the atmosphere surrounding a traffic stop is “substantially less ‘police dominated’” than the atmosphere surrounding an interrogation in a police station (citation omitted)). The length of the encounter, about two hours, may weigh slightly in favor of custody; although, this fact alone is certainly not dispositive. *See United States v. Killingsworth*, 118 F. App’x 649, 651-52 (3d Cir. 2004) (noting “courts have found interrogations lasting anywhere from one and one-half to seven hours to be non-custodial” (citations omitted)); *see also, e.g., United States v. McKinney*, 695 F. Supp. 2d 182, 191-92 (E.D. Pa. 2010) (finding a suspect who answered questions periodically throughout a five-hour search of his office was not in custody given the totality of circumstances). As discussed above, the officers did not use any coercive tactics and never made an overwhelming show of force or authority throughout the encounter. *See United States v. Walters*, 529 F. Supp. 2d 628, 641 (E.D. Tex. 2007) (holding the “mere presence of multiple officers is insufficient to convert an otherwise consensual encounter to a custodial one,” particularly where the additional officers “remained a respectful distance away”). Lastly, Bell having lawfully refused to respond to police questioning and directives just six days prior, clearly understood he did not need to engage in the conversation with Det. Bereda. His decision to stay and talk to Det. Bereda was entirely voluntary and not the product of coercion. *See United States v. Jacobs*, 431 F.3d 99, 108 (3d Cir. 2005) (“A statement is given voluntarily if, when viewed in the totality of the circumstances, it is the product of an essentially free and

unconstrained choice by its maker. . . . A suspect's background and experience, including prior dealings with the criminal justice system, should be taken into account in the voluntariness inquiry. A necessary predicate to a finding of involuntariness is coercive police activity." (citations omitted)). Accordingly, upon consideration of the totality of the circumstances of the April 12 encounter, this Court finds Bell was not in custody and thus not entitled to *Miranda* warnings.

Bell also contends the April 12 search of his car violated his Fourth Amendment rights because it was done without a warrant and without consent. The Government argues Bell consented to the search. It is well settled that a search conducted pursuant to consent is an exception to the rule that a search conducted without a warrant is per se unreasonable. *United States v. Lockett*, 406 F.3d 207, 211 (3d Cir. 2005). "Consent must be voluntary, may be express or implied, and need not be knowing or intelligent." *Id.*

Bell consented to the search both verbally and in writing. Although a person may consent to a search without having knowledge of the right to refuse, Bell's right to refuse the search of his car was conveyed to him by Det. Bereda and expressly stated in the consent form he read and signed. It is clear from the record Bell read through the consent form, as he raised concerns about the seizure of his warning lights. Bell raised no further issues before signing the consent form and agreeing to the search. As discussed above, there was no police coercion during the April 12 encounter, and Bell's argument his consent to the search resulted from his being overborn by the circumstances is rejected. Accordingly, this Court finds Bell's consent to the search of his car was voluntary. Furthermore, having determined there was no Fourth or Fifth Amendment violation involving the Bell's questioning, the argument that his consent was

tainted by prior constitutional violations is also rejected. The April 12 search of Bell's car was therefore lawful.

Having determined there were no constitutional violations during the April 12 encounter, the Court also rejects Bell's argument that statements he made after the April 12 encounter and after his arrest, as well as items seized pursuant to search warrants based upon facts obtained during the April 12 encounter, must be suppressed as the fruits of prior constitutional violations.

Finally, Bell argues evidence from the laptop computer seized from his car on April 12, 2012, must be suppressed because the Government detained it for an unreasonable amount of time in violation of his Fourth Amendment rights. On April 13, 2012, one day after the computer was seized, Det. Gordon obtained a state warrant to search the computer for evidence of forgery. On June 5, 2012, federal law enforcement officers obtained a federal warrant to search the computer for evidence of the crimes of impersonating a federal officer, producing and/or possessing a fraudulent identification document, mail fraud, and wire fraud. The computer was searched on July 27, 2012.

“‘[A] seizure lawful at its inception can nevertheless violate the Fourth Amendment if its manner of execution unreasonably infringes possessory interests protected by the Fourth Amendment’s prohibition on unreasonable seizures.’” *United States v. Stabile*, 633 F.3d 219, 235 (3d Cir. 2011) (quoting *United States v. Jacobsen*, 466 U.S. 109, 125 (1984)). In determining whether the seizure became unreasonable, a court “‘must balance the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion.’” *Id.* (quoting *United States v. Place*, 462 U.S. 696, 703 (1983)).

Bell argues interference with one's Fourth Amendment interests in his personal computer is particularly intrusive because computers are commonly used to store highly personal information. *See United States v. Mitchell*, 565 F.3d 1347, 1357-52 (11th Cir. 2009) (noting the heightened privacy interest in personal computers). Bell also argues this particular computer contained information he needed to start his new business venture. This argument, however, is somewhat undermined by the fact that after the computer was seized, Bell never asked for it to be returned. *See Stabile*, 633 F.3d at 235-36 (finding defendant's argument he maintained a heightened possessory interest in his computer because it contained highly personal information and was essential for his business was undermined by the fact defendant waited 18 months to ask for its return; and citing *United States v. Jones*, 469 U.S. 478, 487 (1985), for the proposition that "defendants who 'never sought return of the property' cannot argue that delay adversely affected Fourth Amendment rights"). The fact Bell protested the seizure of his laptop adds little to the balancing because he nevertheless has not asked for its return. *See id.* at 235 n.11 (holding a defendant's opposition to the seizure of computer hard drives during the search of his house, which seizure had already been consented to by the defendant's wife, "cannot be transformed into a request for return of the hard drives").

It is also significant that a warrant to search Bell's computer was obtained the day after it was seized. "The longer the police take to seek a warrant, the greater the infringement on the person's possessory interest will be, for the obvious reason that a longer seizure is a greater infringement on possession than a shorter one." *United States v. Burgard*, 675 F.3d 1029, 1033 (7th Cir. 2012). In *United States v. Mitchell*, the central case upon which Bell relies, the Government waited 21 days before applying for a search warrant, an amount of time which the court ultimately found was unreasonable. 565 F.3d at 1349, 1353. As noted in *Mitchell*, one of

the purposes of obtaining a search warrant promptly after an item is seized is to ensure the item is promptly returned should the search reveal no incriminating evidence. 565 F.3d at 1352. Here, within one day of the seizure, a Chester County magisterial district judge determined probable cause existed that the computer contained evidence of a crime and issued a search warrant. *Cf. Burgard*, 675 F.3d at 1033 (“[A] key factor in our analysis is the strength of the state’s basis for the seizure. The state has a stronger interest in seizures made on the basis of probable cause than in those resting only on reasonable suspicion. All else being equal, the Fourth Amendment will tolerate greater delays after probable-cause seizures.”). Furthermore, Bell had admitted during the April 12 encounter and in a phone call with Det. Bereda soon after the encounter that the computer contained evidence concerning fraudulent checks. Thus, the likelihood that Bell’s computer would not be returned to him significantly mitigates the intrusion upon his Fourth Amendment interests. *See Mitchell*, 565 F.3d at 1352.

Bell argues, however, the delay in obtaining the federal search warrant and the further delay in searching the computer were unreasonable. Unfortunately, the Government has not expressly stated its reasons for these delays, but some explanations gleaned from the affidavit in support of the federal search warrant inform this Court’s balancing of the private and governmental interests implicated by the seizure of Bell’s computer. Federal investigators did not begin their investigation of Bell until April 13, 2012, the same day the state warrant was issued. Accordingly, some delay in obtaining the federal warrant was necessary to allow federal investigators an opportunity to determine (a) whether a federal crime had been committed, and (b) whether Bell’s computer contained evidence of those federal crimes. Meanwhile, Bell’s interest in the property remained relatively weak because he had admitted the computer

contained evidence he had forged checks, a possible state and federal crime.¹ Moreover, in investigating Bell's possible commission of federal crimes, the federal investigators relied heavily on cooperation from Chester County and Tredyffrin Township law enforcement agencies. There is an obvious public and government interest in promoting local and federal cooperation on criminal investigations.

Although there was likely an unnecessary delay between the time the Government confirmed that Bell's computer should be searched for evidence of federal crimes and its application for a federal search warrant, Bell's Fourth Amendment interests in the computer remained relatively weak, especially given the fact a valid state warrant had already been issued. This Court finds, on balance, the resulting minimal intrusion on Bell's interests in his computer is outweighed by the Government's significant interests justifying the intrusion.

Although Bell lumps together his objections to the delays in both obtaining the warrants and executing the warrants, the reasonableness of a delay in executing a search warrant is a separate inquiry. Federal Rule of Criminal Procedure 41(e)(2)(A)(i) requires a warrant to indicate a deadline for execution within 14 days, but "[t]he Fourth Amendment requirement for timely execution of a warrant is broader" than the 14-day period in Rule 41(e).² *United States v. Winther*, No. 11-212, 2011 WL 5837083, at *10 (E.D. Pa. Nov. 18, 2011). Indeed, the Court of Appeals for the Third Circuit has held "a warrant need only be executed within a reasonable time after its issuance, notwithstanding the presence of 'forthwith' language in the warrant." *United*

¹ Creating and cashing counterfeit checks may constitute the federal crimes of wire fraud, 18 U.S.C. § 1343, and/or bank fraud, § 1344.

² Presumably, the Government had additional time to review the contents of Bell's computer beyond the deadline listed in the warrant pursuant to Federal Rule of Criminal Procedure 41(e)(2)(B), which states a warrant seeking electronically stored information, unless otherwise specified, "authorizes a later review of the media or information consistent with the warrant," and further states the time for executing a warrant in Rule 41(e)(2)(A) refers to the seizure or on-site copying of the media rather than later off-site review.

States v. Bedford, 519 F.2d 650, 655 (3d Cir. 1975). “Timeliness of execution should not be determined by means of a mechanical test with regard to the number of days from issuance, nor whether any cause for delay was per se reasonable or unreasonable. Rather it should be functionally measured in terms of whether probable cause still existed at the time the warrant was executed.” *Id.* at 655-56; *accord Winther*, 2011 WL 5837083, at *10 (citations omitted).

Here, there is no reason, or even argument, that this Court should find probable cause to search Bell’s computer dissipated after the warrant was issued. After the warrant was issued, the computer remained in the custody of the Chester County Detectives Office and then federal law enforcement officers. No reason had emerged to doubt Bell’s admission the computer contained copies of a possibly forged check. This Court therefore finds the 53 days between the issuance of the warrant and the search was reasonable under the circumstances. *See Bedford*, 519 F.2d at 656 (holding “since the record reveals that there was continuing probable cause on the day of the search, execution of the warrant was reasonable”).

CONCLUSIONS OF LAW

1. The April 12, 2012, traffic stop was a lawful seizure. The seizure ended within five minutes when Det. Bereda returned to Bell his registration, insurance documentation, and identification; told Bell he was free to leave; and began walking back to his patrol car.
2. The conversation that followed between Bell and Det. Bereda, and occasionally Det. Gordon and Sgt. Sambuco, was a consensual, noncoercive encounter. Accordingly, there was no unlawful expansion of the scope of the investigatory stop in violation of the Fourth Amendment.
3. After the seizure ended within the first five minutes of the encounter, Bell was never in custody or subjected to custodial interrogation. Accordingly, the officers were under no obligation to provide Bell *Miranda* warnings during the April 12 encounter.

4. All statements by Bell during the April 12 encounter therefore will not be suppressed.
5. The search of Bell's dark blue Ford Crown Victoria and seizure of certain items therein during the April 12 encounter were lawful under the Fourth Amendment based on Bell's voluntary consent to the search and seizures. Those seized items therefore will not be suppressed.
6. There having been no constitutional violations during the April 12 encounter, Bell's subsequent statements to police on April 12 and statements made after his arrest, as well additional seizures of items pursuant to search warrants based on facts obtained during the April 12 encounter, were not tainted by any constitutional violations and therefore will not be suppressed.
7. The delay in obtaining a warrant to search the laptop computer seized during the April 12 encounter and the delay in executing the warrant were not unreasonable under the Fourth Amendment. Evidence obtained from that computer therefore will not be suppressed.

For the reasons set forth above, Bell's motion to suppress will be denied. An appropriate order follows.

BY THE COURT:

/s/ Juan R. Sánchez
Juan R. Sánchez, J.